

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 123 be amended to read as follows:

- 1 Page 1, between lines 14 and 15, begin a new paragraph and insert:
- 2 "SECTION 2. IC 15-3-3-3 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. The following
- 4 definitions apply throughout this chapter:
- 5 (1) "Fertilizer material" means any substance containing nitrogen,
- 6 phosphate, potash, or any recognized plant nutrient that is used
- 7 for its plant nutrient content and that is designed to have value in
- 8 promoting plant growth. The term includes unmanipulated animal
- 9 and vegetable manures.
- 10 (2) "Mixed fertilizer" means any combination or mixture of
- 11 fertilizer materials designed for use or claimed to have value in
- 12 promoting plant growth.
- 13 (3) "Commercial fertilizer" includes mixed fertilizer or fertilizer
- 14 materials, except nonprocessed manure, marl, lime, wood ashes,
- 15 and plaster.
- 16 (4) "Brand" means a term, design, or trademark used in
- 17 connection with one (1) or several grades of fertilizer.
- 18 (5) "Grade" means the minimum percentage of total nitrogen,
- 19 available phosphate (P_2O_5), and soluble potash (K_2O) stated in the
- 20 order given in this definition.
- 21 (6) "Official sample" means any sample of commercial fertilizer
- 22 taken by the state chemist or the state chemist's agent.
- 23 (7) "Ton" means a net weight of two thousand (2,000) pounds

avoirdupois.

(8) "Percent" or "percentage" means the percentage by weight.

(9) "Person" includes an individual, partnership, association, firm, limited liability company, and corporation.

(10) "Distributor" means a person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.

(11) "Sell" or "sale" includes exchange.

(12) "Specialty fertilizer" means a fertilizer distributed for nonfarm use.

(13) "Bulk fertilizer" means a fertilizer distributed in nonpackaged form.

(14) "Registrant" means a person who registers fertilizer under this chapter.

(15) "Storage" means storage of bulk fertilizer by a person who manufactures or distributes bulk fertilizer or stores bulk fertilizer for personal use.

(16) "Board" means the Indiana fertilizer advisory board.

(17) "Blender" means a person ~~who is~~ **or system** engaged in the business of blending fertilizer materials.

(18) "Blending" means the physical mixing or combining of: ~~two (2) or more fertilizer materials; including the mixing, through the simultaneous application of two (2) or more fertilizer materials;~~

(A) one (1) or more fertilizer materials and one (1) or more filler materials;

(B) two (2) or more fertilizer materials; or

(C) two (2) or more fertilizer materials and filler materials;

including mixing through the simultaneous or sequential application of any of the combinations referred to in clause (A), (B), or (C) to produce a uniform mixture.

(19) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet specific ~~requests of a consumer requirements (who is the end user)~~ before blending.

(20) "Use" means the ~~process of placing~~ **placement or usage of commercial fertilizer to promote plant growth on a targeted growing area.**

(21) "Ammonium nitrate" means the ammonium salt of nitric acid, which must contain not less than thirty-three percent (33%) nitrogen, fifty percent (50%) of which is in the ammonium form and fifty percent (50%) of which is in the nitrate form.

SECTION 3. IC 15-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Before distribution in Indiana, each brand and grade of commercial fertilizer shall be registered in the name of the person whose name appears on the label. The application

for registration shall be submitted to the state chemist on a form furnished by the state chemist and shall be accompanied by a fee of twenty dollars (\$20) for each grade of each brand. Fertilizers sold in packages of twelve (12) pounds or less shall be registered for a fee of fifty dollars (\$50) for each grade of each brand. Upon approval by the state chemist, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 each year.

(b) In addition to the appropriate filing fee set forth in subsection (a), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee shall be assessed:

- (1) for an application to renew the registration of a commercial fertilizer under this section that is received after July 31; or
- (2) on a product that must be registered under this section before distribution in Indiana but is found to be in distribution before registration.

(c) The application shall include the following information:

- (1) The name and address of the registrant.
- (2) The brand and grade.
- (3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

Total Nitrogen (N)	percent
Available Phosphate (P_2O_5)	percent
Soluble Potash (K_2O)	percent

When applied to mixed fertilizers, grade shall be given in whole numbers only. However, the state chemist may permit fractional numbers to be used for specialty fertilizers or when additional plant food elements or other additives are added. Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphate and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphate need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guaranteed only by permission of the state chemist who shall grant such permission only if the state chemist determines that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the dean of agriculture of Purdue University or the dean's designee. When any such additional plant foods are claimed, ~~they the~~ **plant foods** shall be included in the guarantee in the form of the element and shall be subject to inspection and analysis in accordance with the methods that may be prescribed by the state chemist.

(d) A distributor is not required to register a brand of commercial fertilizer that is registered under this chapter by another person if the label used by the distributor does not differ in any respect from that used by the registrant.

(e) A distributor who acts as a blender is not required under subsection (a) to register a custom blend that the distributor produces

if the fertilizer materials blended together to produce the custom blend are registered under subsection (a). However, a distributor who acts as a blender shall provide the state chemist with the following information about each custom blend that the distributor produces:

- (1) The name and address of the distributor.
- (2) The brand and grade of the custom blend.
- (3) The guaranteed analysis of the custom blend showing the minimum percentage of plant food claimed in the following order and form:

(A) The percent of total nitrogen (N).

(B) The percent of available phosphate (P_2O_5).

(C) The percent of soluble potash (K_2O).

SECTION 4. IC 15-3-3-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 15.5. (a) If a person violates this chapter or a rule adopted under this chapter, the state chemist may:**

- (1) warn or issue a citation to the person; or**
- (2) deny, suspend, revoke, or amend the person's registration under this chapter.**

(b) A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

SECTION 5. IC 15-3-3-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) The Indiana fertilizer advisory board is established to study the regulation of fertilizer and to advise the state chemist on the administration of this chapter.

(b) The board consists of the following members:

- (1) Two (2) representatives of the retail fertilizer industry.
- (2) One (1) representative of fertilizer manufacturing, distributing, or manufacturing and distributing.
- (3) Two (2) representatives of producers of agricultural crops.
- (4) One (1) representative of the lawn care industry.
- (5) One (1) representative of the Purdue School of Agriculture.
- (6) One (1) representative of a public conservation organization.
- (7) One (1) representative of the livestock industry.**
- ~~(7)~~ **(8) The president of the Indiana Plant Food and Agricultural Chemicals Association, who shall serve as a nonvoting member.**
- ~~(8)~~ **(9) One (1) representative of the department of environmental management, who shall serve as a nonvoting member.**
- ~~(9)~~ **(10) The fertilizer administrator for the office of the state chemist, who shall serve as a nonvoting member.**
- ~~(10)~~ **(11) The engineer specialist for the office of the state chemist, who shall serve as a nonvoting member.**
- (12) One (1) representative of the department of agriculture, who shall serve as a nonvoting member.**

(c) The voting members of the board shall be appointed by the state

1 chemist for terms of four (4) years.

2 (d) Voting members of the board may be appointed for successive
3 terms at the discretion of the state chemist.

4 (e) The state chemist may remove a voting member of the board for
5 cause before the expiration of the member's term.

6 (f) Vacancies created by the death, resignation, or removal for cause
7 of a member of the board must be filled in the manner prescribed for
8 appointment to that board position. Vacancies must be filled within
9 thirty (30) days of the death, resignation, or removal for cause.

10 (g) The board shall elect one (1) of its voting members chairperson
11 to serve for a term of two (2) years, unless the chairperson's
12 appointment expires before the expiration of the term, in which case
13 the term is for the duration of the chairperson's appointment.

14 (h) The board may meet at times specified by the chairperson or by
15 a majority of the board, but shall not meet less than annually.

16 (i) Five (5) voting members of the board constitutes a quorum.
17 Official actions require a majority of the voting members. The
18 chairperson may actively participate in all decisions of the board.

19 (j) Each member of the board who is not a state employee is entitled
20 to receive both of the following:

- 21 (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
- 22 (2) Reimbursement for travel expenses and other expenses
- 23 actually incurred in connection with the member's duties, as
- 24 provided in the state travel policies and procedures established by
- 25 the Indiana department of administration and approved by the
- 26 budget agency.

27 Each member of the board who is a state employee is entitled to
28 reimbursement for travel expenses as provided under IC 4-13-1-4 and
29 other expenses actually incurred in connection with the member's
30 duties, as provided in the state travel policies and procedures
31 established by the Indiana department of administration and approved
32 by the budget agency.

33 (k) The board shall invite nonvoting members to serve at the
34 pleasure of the board.

35 SECTION 6. IC 15-3-3.5-2 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this
37 chapter, unless otherwise provided:

- 38 (1) The term "active ingredient" means:
- 39 (A) in the case of a pesticide other than a plant regulator,
- 40 defoliant, or desiccant, an ingredient that will:
- 41 (i) prevent;
- 42 (ii) destroy;
- 43 (iii) repel; or
- 44 (iv) mitigate;
- 45 insects, nematodes, fungi, rodents, weeds, or other pests;
- 46 (B) in the case of a plant regulator, an ingredient that, through

physiological action, will accelerate or retard the rate of growth or rate of maturation or ~~otherwise~~ alter the behavior of:

(i) ornamental or crop plants; or

(ii) the produce of ornamental or crop plants;

(C) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; ~~and~~

(D) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue; **and**

(E) in the case of a nitrogen stabilizer, an ingredient that will prevent or hinder the process of nitrification, denitrification, ammonia volatilization, or urease production through an action affecting soil bacteria.

(2) The term "adulterated" means a pesticide that has its strength or purity fall below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide product or if any valuable constituent of the pesticide product has been wholly or in part abstracted.

(3) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) The term "board" means the Indiana pesticide review board created by this chapter to collect, analyze, and interpret information on matters relating to the use of pesticides.

(5) The term "defoliant" means any substance or mixture of substances intended to cause leaves or foliage to drop from a plant with or without causing abscission.

(6) The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(7) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or other pests as may be designated by the board. The term does not include:

(A) equipment used for the application of pesticides when sold separately from the pesticides;

(B) firearms; or

(C) simple mechanical devices, such as barriers, traps, or adhesives, or other simple contrivances that are not subject to this chapter as determined by the pesticide review board.

(8) The term "distribute" means to offer for sale, sell, exchange, barter or otherwise supply or offer to supply pesticide products.

(9) The term "fungi" means all non-chlorophyll-bearing thallophytes (all non-chlorophyll-bearing plants of a lower order than mosses and liverworts), including rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living

- 1 man or other animals.
- 2 (10) The term "fungicide" means any substance or mixture of
3 substances intended for preventing, destroying, repelling, or
4 mitigating any fungi.
- 5 (11) The term "herbicide" means any substance or mixture of
6 substances intended for preventing, destroying, repelling, or
7 mitigating any weed.
- 8 (12) The term "highly volatile herbicide" means those herbicides
9 that the board has determined to be capable of emitting vapors
10 that may cause serious injury to desired plants by reason of
11 movement of the vapors from the area of application of the
12 herbicide to areas inhabited by the desired plants.
- 13 (13) The term "inert ingredient" means an ingredient that is not an
14 active ingredient.
- 15 (14) The term "ingredient statement" means ~~either:~~ **either of the**
16 **following:**
- 17 (A) A statement of the name and percentage of each active
18 ingredient, together with the total percentage of the inert
19 ingredients, in the pesticide. ~~or~~
- 20 (B) A statement of the name of each active ingredient in
21 decreasing order of abundance and the total percentage of
22 active ingredients, together with the name of each and total
23 percentage of the inert ingredients, if any, in the pesticide.
24 ~~except clause (A) shall apply if the preparation is highly toxic~~
25 ~~to man; determined under section 10 of this chapter; and~~
26 ~~in addition to clause (A) and clause (B); if a pesticide contains~~
27 ~~arsenic in any form; a statement of the percentages of total and~~
28 ~~water soluble arsenic, each calculated as elemental arsenic.~~
- 29 (15) The term "insect" means any small invertebrate animals
30 generally having the body more or less obviously segmented, for
31 the most part belonging to the class Insecta, comprising six (6)
32 legged, usually winged forms, including beetles, bugs, bees, flies,
33 and other allied classes of arthropods whose members are
34 wingless and usually have more than six (6) legs, including
35 spiders, mites, ticks, centipedes, and wood lice.
- 36 (16) The term "insecticide" means any substance or mixture of
37 substances intended for preventing, destroying, repelling, or
38 mitigating any insects that may be present in any environment.
- 39 (17) The term "label" means the written, printed, or graphic
40 matter on, or attached to, a pesticide product or the immediate
41 container of the pesticide product, and any outside container or
42 wrapper of the retail package of the pesticide product.
- 43 (18) The term "labeling" means all labels and other written,
44 printed, or graphic matter:
- 45 (A) upon the pesticide product or any of its containers or
46 wrappers;

(B) accompanying the pesticide product at any time; or
 (C) to which reference is made on the label or in literature accompanying the pesticide product, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States ~~Departments~~ **Department** of Agriculture; ~~or~~

(ii) **the United States Department of Interior;**

(iii) the United States ~~Public~~ **Department of Health Service, and Human Services;**

(iv) **the United States Environmental Protection Agency;**

(v) state experiment stations;

(vi) state agricultural colleges; or

(vii) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(19) The term "misbranded" means:

(A) any pesticide product if its labeling bears any statement, design, or graphic representation relative to the pesticide product or to its ingredients that is false or misleading;

(B) any pesticide product:

(i) if it is an imitation of or is offered for sale under the name of another pesticide product;

(ii) if its labeling bears any reference to registration under this chapter;

(iii) if the labeling accompanying it does not contain instructions for use that are necessary and, if complied with, adequate for the protection of the public;

(iv) if the label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

(v) if the label does not bear an ingredient statement on that part of the immediate container and on any outside container or wrapper through which the ingredient statement on the immediate container cannot be clearly read, of the retail package that is presented or displayed under customary conditions of purchase. However, a pesticide product is not misbranded under this definition if the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase and the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapping, or labeling, as permitted by the state chemist;

(vi) if any word, statement, or other information required under this chapter or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) to appear on the labeling is not prominently placed on the labeling with conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms as to render it likely to be read and understood by the average individual under customary conditions of purchase and use; (vii) if in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying the pesticide. However, physical or physiological effects on plants or parts of plants shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or (ix) if the immediate container does not clearly display the United States Environmental Protection Agency establishment number indicating the specific location where the pesticide product was produced.

(20) The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(21) The term "nematode" means the invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts also called nemas or eelworms.

(22) The term "person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons whether incorporated or not.

(23) The term "pesticide" means:

(A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest; and

(B) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(24) The term "pesticides for use by prescription only" means any pesticide that the board has found to be more hazardous by one (1) criterion or another than a restricted use pesticide so that any specific use and application shall be determined and prescribed

1 by a qualified pest management specialist approved by the state
2 chemist.

3 (25) The term "plant regulator" means any substance or mixture
4 of substances, intended through physiological action, for
5 accelerating or retarding the rate of growth or rate of maturation,
6 or for otherwise altering the behavior of ornamental or crop plants
7 or the produce of ornamental or crop plants, but shall not include
8 substances to the extent that they are intended as plant nutrients,
9 trace elements, nutritional chemicals, plant inoculants, and soil
10 amendments.

11 (26) The term "registrant" means the person registering any
12 pesticide product under this chapter.

13 (27) The term "restricted use pesticide" means any pesticide
14 classified as a restricted use pesticide by the administrator of the
15 United States Environmental Protection Agency or a pesticide
16 that the board has determined to be unduly hazardous to persons,
17 animals, plants, wildlife, waters, or lands, other than the pests it
18 is intended to prevent, destroy, control, or mitigate.

19 (28) The term "rodenticide" means any substance or mixture of
20 substances intended for preventing, destroying, repelling, or
21 mitigating rodents or any other vertebrate animal that the board
22 shall declare to be a pest.

23 (29) The term "weed" means any plant that grows where the plant
24 is not wanted.

25 (30) The term "aquatic ecologist" means a scientist with a degree
26 in, or extensive training in, or experience in at least one (1) of the
27 following:

28 (A) Aquatic ecology.

29 (B) Limnology.

30 (C) Invertebrate zoology.

31 (D) Invertebrate ecology.

32 (E) Ichthyology.

33 (F) Aquatic botany.

34 (G) Algology.

35 (H) Primary production ecology.

36 (31) The term "terrestrial ecologist" means a scientist with a
37 degree in, or extensive training in, or experience in at least one (1)
38 of the following:

39 (A) Animal ecology.

40 (B) Plant ecology.

41 (C) Vertebrate natural history.

42 (D) Herpetology.

43 (E) Ornithology.

44 (F) Mammalogy.

45 (G) Field zoology.

46 (32) The term "bulk pesticides" means any pesticide or mixture of

pesticides that is transported or held in an immediate reusable container in undivided quantities greater than one hundred (100) pounds net dry weight or fifty-five (55) U.S. gallons liquid measure. The term does not include pesticides that are in the custody of the ultimate user and have been prepared for application by the ultimate user to use in dilution formula strength.

(33) "Final printed labeling" means the printed label and other labeling that will appear on or accompany a pesticide product.

(34) "Front panel" means the part of a label that is visible to a purchaser under normal conditions of sales displays.

(35) "Immediate container" means that part of a container that is in direct contact with a pesticide product.

(36) "Pest" has the meaning set forth in IC 15-3-3.6-2(22).

(37) "Pesticide formulation" means a pesticide product comprised of all active ingredients and inert ingredients.

(38) "Pesticide product" means a pesticide or device offered for distribution or use, including any labeling.

(39) "Produce" means to manufacture, prepare, compound, process, or change the container of a pesticide product or an active ingredient. The term does not include the dilution by individuals of formulated pesticides for the individual's use done according to the directions on a label.

(40) "Wildlife" has the meaning set forth in IC 15-3-3.6-2(29).

SECTION 7. IC 15-3-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. ~~It is unlawful for any~~ **Except as provided in section 4 of this chapter, a person to may not** produce, distribute, display, sell, or offer for sale within ~~this state~~ **Indiana** or deliver for transportation or transport in intrastate commerce or between points within ~~this state~~ **Indiana** through any point outside ~~this state~~ **Indiana** any of the following:

(1) Any pesticide product that has not been registered under section 5 of this chapter.

(2) Any pesticide product if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

(3) A pesticide product if the composition of the product differs from the composition as represented in connection with its registration. However, at the discretion of the state chemist, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(4) Any pesticide (except a bulk pesticide or a pesticide in a container **specifically** designed and constructed to accommodate the return and refill of ~~greater than fifty-five (55) gallons liquid or one hundred (100) pounds of dry material~~) **the container** unless

1 it is in the registrant's or the manufacturer's unbroken immediate
 2 container, and there is affixed to that container, and to any outside
 3 container or wrapper of the retail package through which the
 4 required information on the immediate container cannot be clearly
 5 read, a label bearing:

6 (A) the name and address of the manufacturer, registrant, or
 7 person for whom manufactured;

8 (B) the name, brand, or trademark under which the pesticide
 9 product is sold; and

10 (C) the net weight or measure of the content, subject, however,
 11 to reasonable variations as the state chemist may permit.

12 ~~(5) The pesticides commonly known as standard lead arsenate;~~
 13 ~~basic lead arsenate; calcium arsenate; magnesium arsenate; zinc~~
 14 ~~arsenate; zinc arsenite; sodium fluoride; sodium fluosilicate; and~~
 15 ~~barium fluosilicate unless they have been distinctly colored or~~
 16 ~~discolored as provided by rules adopted under this chapter; or any~~
 17 ~~other white powder pesticide that the state chemist, after~~
 18 ~~investigation of and after public hearing on the necessity for~~
 19 ~~action for the protection of the public health and the feasibility of~~
 20 ~~coloration or discoloration; shall, by rule, require to be distinctly~~
 21 ~~colored or discolored unless it has been so colored or discolored.~~
 22 ~~The state chemist may exempt any pesticide to the extent that it~~
 23 ~~is intended for a particular use or uses from the coloring or~~
 24 ~~discoloring required or authorized by this section if the state~~
 25 ~~chemist determines that coloring or discoloring is not necessary~~
 26 ~~for the protection of the public health.~~

27 ~~(6)~~ (5) Any pesticide product that is adulterated or misbranded.

28 ~~(7)~~ (6) Any pesticide in containers violating rules adopted under
 29 section 10(3) of this chapter. Pesticides found in containers that
 30 are unsafe due to damage may be seized and impounded.

31 ~~(8)~~ (7) A highly volatile herbicide, ~~(as defined in section 2(12) of~~
 32 ~~this chapter)~~ except on written permission by the state chemist.

33 ~~(9)~~ (8) Any bulk pesticide unless it is accompanied in all transfers
 34 of custody or ownership by or held in storage vessels to which is
 35 affixed a label bearing the information specified in subdivision
 36 (4).

37 SECTION 8. IC 15-3-3.5-7 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) The state chemist
 39 shall require the submission of the complete formula of any pesticide
 40 product, including the confidential:

41 (1) statement of formula;

42 (2) analytical methods for the analysis of the pesticide
 43 formulation and the analysis of residues of the pesticide product
 44 in environmental media; and

45 (3) analytical standards of the pesticide product.

46 In the case of a federally registered product, this requirement may be

1 waived.

2 (b) **The state chemist shall register a pesticide product if:**

3 (1) the state chemist determines that the composition of the
4 pesticide product is ~~such as to warrant warrants~~ the proposed
5 claims for it; ~~and if the pesticide product;~~

6 (2) the pesticide product, ~~and~~ its labeling, and other material
7 required to be submitted comply with the requirements of section
8 5 of this chapter; ~~the state chemist shall register the pesticide~~
9 ~~product; and~~

10 (3) **the state chemist determines that the person submitting**
11 **the application for registration has complied with the**
12 **requirements of this chapter.**

13 (c) **The state chemist shall notify the applicant that the pesticide**
14 **product, labeling, or other material required to be submitted fails**
15 **to comply with the law** if it does not appear to the state chemist
16 **determines:**

17 (1) that the pesticide product is such as to warrant the proposed
18 claims for it **the pesticide product;** or if

19 (2) the pesticide product, ~~and~~ its labeling, and other material
20 required to be submitted;

21 do not comply with this chapter.

22 (d) **If the state chemist notifies an applicant under subsection**
23 **(c),** the state chemist shall ~~notify~~ **give** the applicant ~~of the manner in~~
24 ~~which the pesticide product, labeling, or other material required to be~~
25 ~~submitted fail to comply with the law so as to afford the applicant an~~
26 opportunity to make the necessary corrections. If upon receipt of
27 notice, the applicant does not make the corrections, the state chemist
28 may refuse to register the pesticide product.

29 ~~(d)~~ (e) The state chemist, in accordance with the procedures
30 specified in this section, may **deny**, suspend, or cancel the registration
31 of a pesticide whenever the state chemist determines that:

32 (1) the pesticide product; ~~or its~~

33 (2) **the pesticide product's** labeling; ~~or~~

34 (3) **the person submitting the application for registration of**
35 **the pesticide product;**

36 does not comply with this chapter.

37 ~~(e)~~ **Whenever (f) If:**

38 (1) an application for registration is refused; or

39 (2) the state chemist proposes to **deny**, suspend, or cancel a
40 registration;

41 notice of ~~such~~ the action ~~shall~~ **and information concerning the**
42 **person's right to obtain a review under section 7.5 of this chapter**
43 **must** be given to the applicant or registrant. ~~who shall have fifteen (15)~~
44 ~~days from the date of such notice to request a hearing on the proposed~~
45 ~~action in accordance with IC 4-21.5.~~

46 SECTION 9. IC 15-3-3.5-7.5 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: Sec. 7.5. (a) A person who is:

(1) regulated under this chapter; and

(2) aggrieved by any decision of the state chemist;

may obtain a review by the board if the person files a written petition with the board not later than thirty (30) days after the state chemist's decision.

(b) The board shall provide a copy of a petition filed under subsection (a) to the state chemist not later than seven (7) days after receiving the petition.

(c) Not more than fifteen (15) days after receiving a petition under subsection (b), the state chemist shall certify and file with the board a transcript of any record related to the petition, including a transcript of any evidence received.

(d) Whenever a hearing is held under this section, the board may designate one (1) or more persons as the board's agent or representative to conduct the hearing. The agent or representative shall conduct the hearing in the manner provided by IC 4-21.5-3.

(e) After hearing the appeal, the board shall affirm, set aside, or modify the action of the state chemist. However, the state chemist's finding of facts that are supported by the substantial evidence is considered conclusive.

(f) A person aggrieved by any action of the board may obtain judicial review under IC 4-21.5-5.

SECTION 10. IC 15-3-3.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) ~~There is created~~ The Indiana pesticide review board ~~consisting is established~~. The board consists of the following members:

(1) One (1) representative of the state department of health.

~~(2) One (1) representative of the state toxicologist.~~

~~(3) One (1) representative of the state veterinarian.~~

~~(4)~~ (2) One (1) representative of the department of natural resources.

~~(5)~~ (3) One (1) representative of the department of environmental management.

~~(6)~~ (4) One (1) representative of the Purdue University office of agricultural research programs.

~~(7)~~ (5) One (1) representative of the Purdue University cooperative extension service.

~~(8)~~ (6) Two (2) ecologists with earned doctorate degrees:

(A) one (1) a terrestrial ecologist; and

(B) one (1) an aquatic ecologist.

~~No more than one (1) ecologist may be from a state supported university or college and no~~ Not more than one (1) ecologist may be a plant ecologist.

~~(9)~~ (7) One (1) public representative.

~~(+0)~~ **(8)** One (1) representative of the pesticide industry.

~~(+1)~~ **(9)** Two (2) representatives of producers of agricultural crops or products on which pesticides are applied or that may be affected by the application of pesticides:

(A) one (1) of whom represents producers of agronomic crops; and

(B) one (1) of whom represents producers of nonagronomic crops.

~~(+2)~~ **(10)** One (1) public representative from conservation organizations.

~~(+3)~~ **(11)** Three (3) qualified scientists, one (1) each in the fields of entomology, plant pathology, and weed science. One (1) scientist must be the representative of either the Purdue University office of agricultural research programs or the Purdue University cooperative extension service.

~~(+4)~~ **(12)** Three (3) certified and licensed commercial applicators of pesticides who must represent three (3) different certificate or license categories established under IC 15-3-3.6-5.

~~(+5)~~ **(13)** The state chemist, who **is an ex officio member and** shall serve as a nonvoting member.

~~(+6)~~ **(14)** The pesticide administrator for the office of the state chemist, who shall serve as a nonvoting member.

~~(+7)~~ **(15)** The pesticide training coordinator, who shall serve as a nonvoting member.

(b) The voting members shall be appointed by the governor for terms of four (4) years **and, subject to subsection (d), continue until the member's successor is approved and qualified.** Appointments shall be made so that no more than five (5) terms expire annually.

(c) Voting members may be appointed for successive terms at the discretion of the governor.

(d) The governor may remove a voting member of the board prior to the expiration of the member's term for cause.

SECTION 11. IC 15-3-3.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. ~~Ten (+0)~~ **(a) Nine (9)** members of the board shall constitute a quorum. ~~and~~

(b) Official actions ~~will be~~ **are** subject to approval by a simple majority of board members present at a called meeting.

(c) The ~~chairman~~ **chairperson** shall actively participate in all decisions of the board.

SECTION 12. IC 15-3-3.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. ~~State officials and staff members of state offices as well as Purdue University office of agricultural research programs and cooperative extension service staff members appointed to the board shall serve without compensation but shall be entitled to receive per diem payments at rates and under conditions incident to these positions. The following individuals~~

1 **appointed to the board shall serve without compensation but are**
 2 **entitled to receive per diem payments at rates and under conditions**
 3 **incident to these positions:**

4 **(1) State officials.**

5 **(2) Staff members of state offices.**

6 **(3) Staff members of the Purdue University office of**
 7 **agricultural research programs.**

8 **(4) Cooperative extension service staff members.**

9 Other members are entitled to reimbursement for traveling and other
 10 expenses as provided in the ~~state~~ **Purdue University** travel policies
 11 and procedures, established by the ~~Indiana~~ **Purdue University**
 12 department of ~~administration~~ **transportation** and approved by the
 13 ~~budget agency.~~ **Purdue University vice president of business**
 14 **services.**

15 SECTION 13. IC 15-3-3.5-18, AS AMENDED BY P.L.40-2006,
 16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2008]: Sec. 18. The state chemist ~~individually~~ or ~~through~~ the
 18 state chemist's agent may do the following:

19 (1) Enter any public or private premises, including any vehicle of
 20 transport during regular business hours: ~~in order~~

21 **(A) to:**

22 **(i)** have access to; and ~~to~~

23 **(ii)** obtain samples of;
 24 pesticide products; and

25 **(B) to:**

26 **(i)** examine; and

27 **(ii)** copy;

28 records relating to ~~their~~ **the production**, use, transportation,
 29 and sale of **pesticide products**, subject to this chapter and the
 30 rules adopted under this chapter.

31 (2) Enter at ~~at~~ **a reasonable times time** in or upon any:

32 **(A)** private; or

33 **(B)** public property;

34 for the purpose of inspection and investigating conditions
 35 possibly resulting from the use or misuse of a pesticide product.

36 SECTION 14. IC 15-3-3.5-19 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. **(a)** The
 38 examination of pesticide products shall be made under the direction of
 39 the state chemist for the purpose of determining whether the pesticide
 40 products comply with ~~the requirements~~ of this chapter.

41 **(b)** If it appears after an examination that a pesticide product fails
 42 to comply with this chapter, and the state chemist contemplates
 43 instituting proceedings against any person, the state chemist shall ~~cause~~
 44 **give** appropriate notice to ~~be given to~~ the person. ~~Any~~

45 **(c)** A person notified **under subsection (b)** shall be given a
 46 opportunity to present the person's views, either orally or in writing,

with regard to the contemplated proceedings, ~~and, to the state chemist.~~

(d) ~~If in the opinion of the state chemist it shall appear that determines that a person violated this chapter, has been violated by the person, then~~ **subject to subsection (e)**, the state chemist ~~shall~~ **may** refer the facts to the prosecuting attorney for the county in which the violation occurred with a copy of the results of the analysis or the examination of the pesticide product. ~~Nothing in~~

(e) This chapter may **not** be construed as requiring the state chemist to report for prosecution or for the institution of other proceedings minor violations of this chapter whenever the state chemist believes that the public interests will be best served by other action.

SECTION 15. IC 15-3-3.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) Except as provided in subsection ~~(c)~~, **(f)**, ~~whenever if the state chemist:~~

(1) finds any pesticide product: ~~is found by the state chemist~~

(A) upon any premises; or

(B) in any means of conveyance;

where it is held for purposes of, or during or after, distribution, or sale, **or use**; and

(2) there is reason to believe determines that the pesticide product:

(A) is in violation of this chapter; ~~or that the pesticide product~~

(B) has been or is intended to be:

(i) distributed; ~~or~~

(ii) sold; **or**

(iii) used;

in violation of this chapter;

the state chemist may issue a written or printed stop sale, use, or removal order to the owner or custodian of the pesticide product; and after receipt of the order, the owner or custodian may not sell, use, or remove the pesticide product described in the order except in accordance with the provisions of the order or until the pesticide product is released in writing by the state chemist or by order of a proper court: **an order under subsection (b).**

(b) The state chemist may issue a written or printed:

(1) stop sale;

(2) use; or

(3) removal;

order to the owner or custodian of a pesticide product.

(c) Except as provided in subsection (d), after receiving an order under subsection (b), the owner or custodian of a pesticide product may not:

(1) sell;

(2) use; or

(3) remove;

the pesticide product described in the order.

(d) The owner or custodian of a pesticide product who receives an order under subsection (b) may:

- (1) sell;
- (2) use; or
- (3) remove;

the pesticide product only in accordance with the provisions of the order or until the pesticide product is released in writing by the state chemist or by order of a court.

~~(b)~~ (e) When a stop sale order is issued under subsection ~~(a)~~; (b), the state chemist shall immediately issue a notification to the dealer or registrant of the pesticide product that states the following:

- (1) A stop sale order has been issued on the pesticide product.
- (2) A reference to the specific language of the law or ~~regulation~~ rule that is believed to have been violated.

~~(c)~~ (f) Labels of pesticide devices may be submitted to the state chemist for approval before the sale of the pesticide device.

SECTION 16. IC 15-3-3.5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 35. ~~(Delegation of Duties) All authority~~ The state chemist may delegate to an employee or agent any function that is vested in the state chemist by virtue of the provisions of this chapter. may with like force and effect be executed by his authorized agent or agents.

SECTION 17. IC 15-3-3.6-2, AS AMENDED BY P.L.40-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this chapter:

- (1) "Agricultural commodity" means any plant, or part of a plant, and animals or animal products produced primarily for sale, consumption, propagation, or other use by man or animals.
- (2) "Animal" means all vertebrate and invertebrate species, including man and other mammals, birds, fish, and shellfish.
- (3) "Beneficial insects" means insects that, during some part of their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise useful to man.
- (4) "Board" means the Indiana pesticide review board established by IC 15-3-3.5.
- (5) "Certified applicator" means any individual who is certified under this chapter as qualified to use or supervise the use of pesticides and has been issued a certificate as evidence of the individual's qualifications.
- (6) "Private applicator" means a certified applicator who uses or supervises the use of pesticides for purposes of producing any agricultural commodity on property owned, rented, or managed by the employer or the applicator, if applied without compensation on the property of another person.
- (7) "Commercial applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or

supervises the use of pesticides for any purpose or on any property other than as provided by subdivision (6).

(8) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(9) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(10) "Device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than man, bacteria, virus, or other microorganism on or in living man or other living animals. This term does not include equipment used for the application of pesticides when sold separately from the pesticides.

(11) "Distribute" means to offer for sale, sell, exchange, barter, or otherwise supply or offer to supply a pesticide.

(12) "Environment" includes water, air, land, and all plants and man and other animals living in water, air, or on land and the interrelationships that exist among these.

(13) "Equipment" means any type of ground, water, or aerial apparatus or contrivance using motorized, mechanical, or pressurized power, used to apply any pesticide.

(14) "Fungus" means any nonchlorophyll-bearing plant of a lower order than mosses and liverworts, including rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.

(15) "Insect" means any small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, including beetles, bugs, bees, flies, and other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, including spiders, mites, ticks, centipedes, and wood lice.

(16) "Licensed pesticide business" means any licensed person that owns, operates, or manages a business that is engaged in or professes to be engaged in:

(A) using any pesticide, including restricted use pesticides; or

(B) making diagnostic inspections or reports to determine infestations of wood destroying pests.

(17) "Licensed applicator for hire" means any licensed certified commercial applicator who is employed by a licensed pesticide business to use or to supervise the use of any pesticide on the property of another and who has assumed direct responsibility for the use or supervision of the use of pesticides by the business.

(18) "Licensed public applicator" means a licensed certified

commercial applicator who uses or supervises the use of a restricted use pesticide as an employee of a state agency, municipal corporation, or other governmental agency. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the board.

(19) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda. These are unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts. Nematodes may also be called nemas or eelworms.

(20) "Permit" means a written certificate issued by the state chemist or the state chemist's authorized agent to a private applicator, authorizing the purchase, possession, or use of restricted use pesticides.

(21) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not.

(22) "Pest" means:

(A) any insect, rodent, nematode, fungus, or weed; or

(B) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) that is declared to be a pest by the administrator of the United States Environmental Protection Agency or by the board.

(23) "Pesticide" means:

(A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

(B) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(24) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(25) "Property" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, **vehicles**, and machinery, appurtenant to or situated on land and water areas, fixed or mobile, including any used for transportation.

(26) "Restricted use pesticide" means:

(A) any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency; or

(B) a pesticide that the board has determined to be unduly

- 1 hazardous to persons, animals, plants, wildlife, waters, or
 2 lands other than the pests the pesticide is intended to prevent,
 3 destroy, control, or mitigate.
- 4 (27) "Unreasonable adverse effects on the environment" means an
 5 unreasonable risk to man or the environment, taking into account
 6 the economic, social, and environmental costs and benefits of the
 7 use of any pesticide.
- 8 (28) "Weed" means any plant which grows where it is not wanted.
- 9 (29) "Wildlife" means all living things that are not human,
 10 domesticated, or pests. This term includes mammals, birds,
 11 reptiles, and aquatic life.
- 12 (30) "Certificate of financial responsibility" means a notarized
 13 statement from an officer of a bank or other financial institution
 14 attesting to the fact that a licensee under this chapter has adequate
 15 financial resources equal to the amount of liability insurance or
 16 bonding required by rule under section 13 of this chapter to
 17 protect persons who may suffer legal damages as a result of the
 18 applicator's pesticide operations or the pest inspector's
 19 inspections.
- 20 (31) "Registered pesticide dealer" means any person who
 21 distributes any restricted use pesticide.
- 22 (32) "Licensed applicator not for hire" means a licensed certified
 23 commercial applicator who is employed by a private employer to
 24 use or supervise the use of a restricted use pesticide only on the
 25 property of the employer. The term includes a commercial
 26 applicator using a pesticide in a potentially hazardous situation or
 27 site as determined by the board.
- 28 (33) "Pesticide consultant" means a person engaged in the retail
 29 sale of pesticides who:
- 30 (A) offers or supplies technical advice to;
 31 (B) aids; or
 32 (C) makes recommendations to;
 33 another person concerning the use of a pesticide as part of
 34 business.
- 35 (34) "Pesticide formulation" means a pesticide product comprised
 36 of all active ingredients and inert ingredients.
- 37 (35) "Pesticide product" means a pesticide or device offered for
 38 distribution or use, including any labeling.
- 39 (36) "Registered technician" means a person who:
- 40 (A) is not licensed under this chapter;
 41 (B) has registered with the state chemist; and
 42 (C) is authorized to engage in pesticide use and related
 43 activities under the direct supervision of a licensed and
 44 certified applicator.
- 45 (37) "Use" means an act of handling, releasing, or exposing
 46 individuals or the environment to a pesticide. The term includes

the following:

(A) Application or supervision of an application of a pesticide, including mixing or loading the pesticide.

(B) Storage of pesticides and pesticide containers by the intended applicator of the pesticides.

(C) Transportation of pesticides and pesticide containers by the intended applicator of the pesticides.

(D) Disposal of pesticides and pesticide containers by the intended applicator of the pesticides.

(38) "Licensed pest inspector" means an individual licensed under this chapter to make diagnostic inspections or reports to determine infestations of wood destroying pests on the property of another person and meets the requirements under section 13 of this chapter.

SECTION 18. IC 15-3-3.6-6, AS AMENDED BY P.L.40-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) **Subject to section 10 of this chapter**, a person may not engage in or profess to engage in the business of:

(1) using a pesticide; or

(2) making diagnostic inspections or reports to determine infestations of wood destroying pests;

on the property of another for hire at any time without a pesticide business license issued by the state chemist. The state chemist shall require an annual license fee of forty-five dollars (\$45) for each pesticide business license **that is** issued.

(b) A pesticide business license must be obtained for each business location from which pesticide use or application is conducted.

(c) The application for a license ~~shall be made~~ **must be** on a form provided by the state chemist. Each application ~~shall~~ **must** contain information necessary for the administration of this chapter.

(d) The state chemist may not issue a pesticide business license until the applicant or a pesticide applicator in the applicant's hire who uses or supervises the use of a pesticide on the property of another is certified by passing an examination to demonstrate to the state chemist the applicant's or applicator's knowledge of the:

(1) use of pesticides under the category for which the applicant or applicator has applied; and ~~the applicant's or applicator's knowledge of the~~

(2) nature and effect of pesticides the applicant or applicator may apply under the categories.

At least one (1) licensed applicator for hire must be associated with each location from which pesticides are used for hire.

(e) The state chemist may renew any **pesticide** business license.

(f) **Subject to subsections (a), (b), (c), and (d) and section 14 of this chapter**, if:

(1) the state chemist finds the applicant qualified to engage in the

business of using pesticides **or making diagnostic inspections or reports to determine infestations of wood destroying pests** on the property of another;

(2) the applicant files evidence of financial responsibility required under section 13 of this chapter; and

(3) the applicant applying for a license involving aerial application of pesticides has met all of the requirements of:

(A) the Federal Aviation Administration;

(B) the Indiana department of transportation; and

(C) any other applicable federal or state statutes or regulations to operate the equipment described in the application;

the state chemist ~~shall~~ **may** issue a pesticide business license limited to the categories for which the applicant or a pesticide applicator in the applicant's hire is qualified. The license ~~shall expire~~ **expires** January 1 of the year following issue unless it has been invalidated, revoked, or suspended earlier by the state chemist. ~~Any~~ **A** surety bond or certificate of liability insurance in force or certificate of financial responsibility required under section 13 of this chapter must be maintained and in effect on a continuing basis.

(g) The state chemist may limit a license or the operation of a business to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified.

(h) If a license is not issued as applied for, the state chemist shall inform the applicant in writing of the reasons the license was not issued.

SECTION 19. IC 15-3-3.6-8.1, AS AMENDED BY P.L.40-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8.1. (a) A person applying for a license described under section 7, 7.1, or 8 of this chapter must:

(1) submit an application to the state chemist on a form provided by the state chemist;

(2) pass the appropriate examination provided under section 5 of this chapter;

(3) except for a person applying for a licensed public applicator's license, submit a fee of forty-five dollars (\$45) to the state chemist; and

(4) if the person will engage in the aerial application of pesticides, submit proof to the state chemist that the person has satisfied aerial application requirements under applicable state and federal laws.

(b) **Subject to section 14 of this chapter**, if a person meets the requirements under subsection (a), the state chemist ~~shall~~ **may** issue the appropriate license to the person.

(c) If the state chemist does not issue a license to a person ~~that~~ **who** applied for a license described under subsection (a), the state chemist shall inform the person in writing of the reason the license was not

1 issued.

2 (d) A person ~~that~~ **who** has been issued a license under subsection
3 (b):

4 (1) shall notify the state chemist in writing within ten (10) days
5 after a change in or termination of the person's employment as a
6 licensed applicator for hire, a licensed applicator not for hire, or
7 a licensed public applicator; and

8 (2) may apply to the state chemist to transfer or amend the
9 person's license by submitting an updated application form
10 described under subsection (a)(1).

11 (e) A license issued under subsection (b):

12 (1) expires January 1 of each year; and

13 (2) **subject to section 14 of this chapter**, may be renewed by the
14 person holding the license if the person:

15 (A) submits a renewal application on a form provided by the
16 state chemist; and

17 (B) except for a person renewing a licensed public applicator's
18 license, pays a forty-five dollar (\$45) renewal fee;

19 before January 1.

20 SECTION 20. IC 15-3-3.6-13, AS AMENDED BY P.L.40-2006,
21 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2008]: Sec. 13. (a) The state chemist may not issue a pesticide
23 business license or a pest inspector license until the applicant for the
24 license has furnished a surety bond, a certificate of liability insurance
25 in force, or a certificate of financial responsibility to protect persons
26 who may suffer legal damages as a result of the pesticide operations or
27 pest inspections of the applicant. If the surety bond, liability insurance,
28 or financial responsibility is not maintained at all times during the
29 licensing period, the pesticide business license, pest inspector license,
30 and any associated commercial applicator licenses **and technical**
31 **registrations** are invalid. The applicant may not engage in or profess
32 to be engaged in the business of using pesticides or pest inspection
33 until the financial responsibility is ~~brought into in~~ compliance and the
34 applicant's license is reinstated by the state chemist.

35 (b) ~~Nothing in~~ This chapter ~~relieves~~ **does not relieve** any person
36 from liability for any damage to the person or property of another
37 caused by the use of pesticides even though the use conforms to the
38 rules adopted under this chapter.

39 SECTION 21. IC 15-3-3.6-14, AS AMENDED BY P.L.40-2006,
40 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2008]: Sec. 14. Subject to section 14.5 of this chapter, the
42 state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil
43 penalty on a person for a violation under this chapter. The state chemist
44 may also deny, suspend, revoke, or modify any provision of any
45 license, permit, registration, or certification issued under this chapter
46 if the state chemist finds that the applicant or the holder of a license,

1 permit, registration, or certification has committed any of the following
 2 acts, each of which is a violation of this chapter:

3 (1) Made false or fraudulent claims **either verbally or** through
 4 any media misrepresenting the effect of pesticides or methods to
 5 be ~~utilized~~ **used**.

6 (2) Recommended, used, or supervised the use of any registered
 7 pesticide in a manner inconsistent with its labeling approved by
 8 the United States Environmental Protection Agency or Indiana
 9 state registration for that pesticide, or in violation of the United
 10 States Environmental Protection Agency or Indiana state
 11 restrictions on the use of that pesticide.

12 (3) Used known ineffective or improper pesticides **or known**
 13 **ineffective amounts of pesticides**.

14 (4) Operated faulty or unsafe equipment.

15 (5) Operated in a careless or negligent manner.

16 (6) Neglected or, after notice, refused to comply with this chapter,
 17 the rules adopted under this chapter, or of any lawful order of the
 18 state chemist **or the board**.

19 (7) Refused or neglected to:

20 (A) keep and maintain the records required by this chapter; or
 21 ~~to~~

22 (B) make reports and supply information when required **or**
 23 **requested by the state chemist in the course of an**
 24 **investigation or inspection**.

25 (8) Made false or fraudulent records, invoices, or reports.

26 (9) Engaged in or professed to be engaged in the business of:

27 (A) using a pesticide; or

28 (B) making a diagnostic inspection to determine infestations
 29 of a wood destroying pest;

30 for hire on the property of another without having a pesticide
 31 business license.

32 (10) Used a restricted use pesticide without having an applicator
 33 who is licensed or permitted under this chapter in direct
 34 supervision.

35 (11) Used fraud or misrepresentation in making an application
 36 for, or renewal of, a license, permit, registration, or certification.

37 (12) Refused or neglected to comply with any limitations or
 38 restrictions on or in a duly issued license, permit, registration, or
 39 certification.

40 (13) Aided or abetted a person to evade the provisions of this
 41 chapter, conspired with a person to evade the provisions of this
 42 chapter, or allowed a license, permit, registration, or certification
 43 to be used by another person.

44 (14) Made false or misleading statements during or after an
 45 inspection concerning any infestation or infection of pests.

46 (15) Impersonated any federal, state, county, or city inspector,

investigator, or official.

(16) Knowingly purchased or used a pesticide that was not registered under IC 15-3-3.5.

(17) Failed to continuously maintain financial responsibility required under section 13 of this chapter **or to provide proof of financial responsibility to the state chemist when requested.**

(18) Intentionally altered a duly issued license, permit, registration, or certification.

(19) Recklessly, knowingly, or intentionally impeded or prevented the state chemist or the state chemist's agent from performing a duty of the state chemist.

SECTION 22. IC 15-3-3.6-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A person who **recklessly, knowingly, or intentionally:**

(1) violates this chapter; or

(2) impedes ~~hinders~~, or prevents the state chemist or the state chemist's ~~authorized agent in performance~~ **from performing a duty of the state chemist's duty chemist;**

commits a Class C misdemeanor.

(b) A person who **recklessly**, knowingly, or intentionally:

(1) violates section 14(9) of this chapter after the state chemist has issued written notification to that person regarding a previous violation of section 14(9) of this chapter; **or**

(2) physically assaults the state chemist or the state chemist's agent while performing a duty of the state chemist;

commits a Class A misdemeanor.

(c) The state chemist may bring an action to enjoin the violation or threatened violation of this chapter or ~~any a rule made~~ under this chapter. A court may not allow the recovery of damages for **an** administrative action taken **under this subsection** if the court finds that there was probable cause for the action.

SECTION 23. IC 15-3-3.6-18, AS AMENDED BY P.L.40-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) The state chemist may enter upon any public or private property at reasonable times, in order to do the following:

(1) Observe the use and application of a pesticide.

(2) Inspect ~~any~~ equipment subject to this chapter.

(3) Inspect and sample property actually or reported to be exposed to pesticides.

(4) Inspect storage or disposal areas.

(5) Inspect or investigate complaints of injury to humans or property.

(6) Sample pesticides being used or to be used.

(7) Inspect and obtain copies of pesticide sale, distribution, purchase, use, storage, and disposal records.

(b) ~~If the state chemist is denied access to any property for the purposes set forth in this chapter,~~ The state chemist may, upon showing a need, apply to any court ~~of competent with~~ jurisdiction for a search warrant authorizing access to the property. ~~for said purposes.~~ The court may, ~~upon such~~ **after receiving the** application and ~~after~~ finding a need, issue the search warrant for the purposes requested.

(c) ~~Each~~ **A** prosecuting attorney to whom ~~any~~ **a** violation of this chapter is reported may institute and prosecute the violation in a court ~~of competent with~~ jurisdiction of that county without delay. The state chemist may apply for and the court grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction may be issued without bond.

SECTION 24. IC 15-3-3.6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. **(a)** Commercial applicators and licensed pest inspectors shall maintain records ~~with respect to applications concerning:~~

(1) the application of restricted use pesticides; ~~and~~

(2) diagnostic inspections to determine infestations of wood destroying pests; ~~and~~

(3) any relevant information that the state chemist ~~may deem determines by rule is necessary to further for~~ the purposes of this chapter. ~~may be specified by rule.~~

(b) The state chemist may require certified applicators to maintain records related to applications of state restricted pesticide uses. ~~These~~

(c) Records ~~shall required under this section must~~ be kept for a period of two (2) years from the date of the **inspection or the** application of the pesticide, ~~to which the records refer; and or for the time specified by rule.~~

(d) The state chemist shall be provided access to the records by the commercial applicator **or licensed pest inspector.**

SECTION 25. IC 15-3-3.6-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. **(a)** The state chemist may ~~by regulation adopt rules to~~ require the reporting of significant pesticide accidents or incidents.

(b) Any person:

(1) claiming damages from a pesticide accident ~~shall or incident;~~
and

(2) requesting an investigation of those damages by the state chemist;

must file a claim on a form provided by a report with the state chemist. ~~This report must be filed within sixty (60) days after the date that damages occurred.~~ If a growing crop is alleged to have been damaged, the report must be filed before twenty-five percent (25%) of the crop has been harvested. ~~The state chemist shall; within seven (7)~~

1 days after the receipt of such statement, notify the licensee and the
 2 owner or lessee of the property or other persons who may be charged
 3 with the responsibility for the damages claimed; and furnish copies of
 4 such statements as may be requested.

5 SECTION 26. IC 15-3-3.6-21 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. The state chemist
 7 may cooperate with, and enter into agreements with, any other agency
 8 of ~~this~~ the state, any federal agency, or any other state agency or
 9 nongovernmental organization for the purpose of carrying out this
 10 chapter to:

- 11 (1) secure uniformity of rules;
- 12 (2) cooperate in the enforcement of the federal pesticide control
- 13 laws through the use of state or federal personnel and facilities
- 14 and to implement cooperative enforcement programs;
- 15 (3) develop and administer state plans for certification of
- 16 applicators consistent with federal standards;
- 17 (4) contract or cooperate with agencies or organizations for the
- 18 purpose of training applicators;
- 19 (5) contract for monitoring pesticides; ~~for the national plan;~~
- 20 (6) prepare and submit state plans to meet federal certification
- 21 standards;
- 22 (7) ~~regulate certified applicators; administer and enforce~~
- 23 ~~requirements under this chapter; and~~
- 24 (8) make reports to the United States Environmental Protection
- 25 Agency as the agency ~~may require; requires.~~

26 SECTION 27. IC 15-3-3.6-22 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. The state chemist
 28 may waive all or part of the requirements provided for in sections 3, 5,
 29 6, 7, 7.1, 8, 8.1, 8.3, 9, **10.1**, and 12 of this chapter on a reciprocal basis
 30 with any other state agency or federal agency that has substantially the
 31 same standards.

32 SECTION 28. IC 15-3-3.6-24 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. **(a)** A person may
 34 not transport, store, or dispose of any pesticide or pesticide containers
 35 in a manner ~~as to that may~~ cause injury to humans, beneficial
 36 vegetation, crops, livestock, wildlife, beneficial insects, or to pollute
 37 any waterway in a way harmful to any wildlife in a waterway.

38 **(b)** The board may adopt rules governing the storage and disposal
 39 of pesticides or pesticide containers. In determining these standards,
 40 the board shall take into consideration any regulations issued by the
 41 United States Environmental Protection Agency.

42 SECTION 29. IC 15-5-13-6 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A commercial feed,
 44 except a custom-mixed feed, ~~shall~~ **must** be accompanied by a label
 45 bearing the following information:

- 46 (1) The net weight.

(2) The product name and the brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis stated in ~~such the~~ terms ~~as that~~ the ~~director, state chemist,~~ by ~~regulation rule,~~ determines ~~is are~~ required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by ~~the Association of Official Analytical Chemists.~~ **AOAC International.**

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed. ~~Provided, That However,~~ the ~~director, state chemist,~~ by ~~regulation rule,~~ may:

(i) ~~(A)~~ permit the use of a collective term for a group of ingredients ~~which that~~ perform a similar function; or

(ii) ~~(B)~~ exempt ~~such a~~ commercial feeds, feed or any group thereof, of commercial feeds from ~~this the~~ requirement of for an ingredient statement if ~~he the~~ state chemist finds that such a statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(6) Adequate directions for use for: ~~att~~

(A) commercial feeds containing drugs; and ~~such~~

(B) other feeds ~~as that~~ the ~~director may require~~ state chemist requires by ~~regulation rule~~ as necessary for their safe and effective use.

(7) ~~Such~~ Precautionary statements ~~as that~~ the ~~director state chemist~~ by ~~regulation rule~~ determines are necessary for the safe and effective use of the commercial feed.

SECTION 30. IC 15-5-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. Custom-mixed feed ~~shall must~~ be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of delivery.

(4) The product name and brand name, if any, and the net weight of each ~~registered~~ commercial feed used in the mixture, and the common or usual name and net weight of each other ingredient used, and the specific content, stated in terms as required in section 6 of this chapter, of any nutrients and nonnutritive additives added at the request of the purchaser.

(5) Adequate directions for use for: ~~att~~

(A) custom-mixed feeds containing drugs; and ~~for such~~

(B) other feeds ~~as that~~ the ~~director may require~~ state chemist requires by ~~regulation rule~~ as necessary for their safe and effective use.

- 1 (6) ~~Such~~ Precautionary statements ~~as that~~ the ~~director state~~
- 2 **chemist** by ~~regulation rule~~ determines are necessary for the safe
- 3 and effective use of the custom-mixed feed."
- 4 Renumber all SECTIONS consecutively.
(Reference is to ESB 123 as printed February 15, 2008.)

Representative Gutwein